

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER 97-0596

Controlled Substance Excise Tax

For The Period: 08/13/97

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ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

The Indiana State Police Marijuana Eradication Unit spotted marijuana growing on property occupied by the taxpayer and her spouse. Charges were filed by the Monroe County Prosecutor but were dismissed and a controlled substance excise tax assessment was made. The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of 3,493.20 grams of marijuana. The taxpayer was assessed \$24,452.40 by the Department on October 28, 1997.

Additional facts will be provided as necessary.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;...

During the hearing, the taxpayer stated that she knew nothing about the marijuana growing on her property. The taxpayer states that she should not be liable for the excise tax as a result of her husband claiming that all of the controlled substance found on their property was his.

In the hearing the taxpayer admitted that her spouse had used marijuana in the past. The taxpayer stated that she did not realize that her husband was storing and growing marijuana, and had 2,342.50 grams of it stored in a refrigerator she had purchased. The refrigerator was located in a small building where the taxpayer works on her dried flower arrangements. The taxpayer stated that the refrigerator was plugged, in and when escorted to the building by the police, and upon opening the refrigerator realized that it was cold and had obviously been functioning for an extended period of time. An additional 638.20 grams of marijuana was located in bags throughout the building. The taxpayer vehemently denied any knowledge of the thirty-two (32) marijuana plants (512.5 grams) growing behind another out building. The taxpayer's spouse indicated that the plants were growing in an enclosed area of the farm where the taxpayer would not have seen them. Not only was marijuana being cultivated on the real property, but also quantities of processed marijuana was stored in several places in the residences to which taxpayer had access. The facts show that the controlled substance was manufactured and possessed where taxpayer lived. Therefore, it is difficult to find that taxpayer has supported her burden by showing, by a preponderance of evidence, that the assessment is wrong based on her self-serving statement that the marijuana was not hers, but someone else's. The Department agrees with the taxpayer that she did not have any knowledge of the plants growing behind the building. The marijuana in the shed was clearly within the area in which the taxpayer frequented around the farm putting her within reach of the marijuana in the shed. Therefore, the taxpayer was in possession of 2,980.70 grams of marijuana located in the building.

FINDING

The taxpayer's protest is partially sustained and partially denied. The taxpayer is sustained as to the 512.5 grams of marijuana growing in the enclosure. The taxpayer's protest is denied as to the 2,980.70 grams of marijuana located in the building she used for her dried flowers.

II. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

FINDING

The taxpayer's protest of the Department's imposition of a one hundred percent (100%) penalty is denied.